

REMARKS

This Amendment is in response to the Office Action mailed April 22, 2004. The Office Action rejected claims 1-10 and 12-15 under 35 U.S.C. § 103. Claims 1-10 and 12-15 remain pending in the application. Reconsideration in light of the amendments and remarks made herein is respectfully requested.

Rejections Under 35 U.S.C. § 103

The Office Action rejected claims 1, 2, 6, 8, 10, 12, and 14 under 35 U.S.C. § 103 as being unpatentable over Arnold (U.S. Patent No. 6,016,504) in view of the ASTA reference ("ASTA") ("Credit Crunch: ASTA hopes to encourage operators to pay timely commissions on credit card bookings", Travel Agent (May 2, 1994)).

The Office Action also rejected claims 3, 9, and 13 under 35 U.S.C. § 103 as being unpatentable over Arnold (U.S. Patent No. 6,016,504) in view of the ASTA reference and further in view of Official Notice.

The Office Action also rejected claims 4, 5, 7, and 15 under 35 U.S.C. § 103(a) as being unpatentable over Arnold in view of the ASTA reference and further in view of Bezos et al. (U.S. Patent No. 6,029,141).

Applicants traverse this rejection in its entirety.

The Office has the burden under 35 U.S.C. §103 to establish a *prima facie* case of obviousness. *In re Piasecki*, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787 (Fed. Cir. 1984).

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA

1974). Applicants submit that neither Arnold nor ASTA teach or suggest every claimed limitation. Thus, regardless of whether or not Arnold can be combined with ASTA, Applicants submit that such a combination does not teach or suggest every limitation of the claimed invention.

Arnold teaches a system for purchasing a product over a network where (1) a customer accesses a virtual outlet web page to view products sold by the merchant, (2) a customer requests a merchant web page and identifies the originating virtual outlet web page, (3) the customer purchases the product directly from the merchant web page, (4) and the merchant credits the originating virtual outlet web page with the sale. (Col. 5, lines 30-62).

The ASTA reference teaches that booking agents can get immediate commissions by accepting cash or checks and then passing the remainder to the vendor for fulfilling the transaction.

Applicants submit that the following limitations are not taught by Arnold and/or the ASTA reference:

"transferring customer's payment information from the vendor web site to the host web site when the software on the vendor web site has determined that the customer has been routed to the vendor web site from the host web site; collecting the funds for the transaction by the host web site using the customer's payment information transferred in the preceding step."

The Office Action alleges that the ASTA reference teaches the step of transferring customer payment information from the vendor to the host when it is determined that the customer has been routed to the vendor from the host. However, the ASTA reference merely teaches that the booking agent (host) collects the funds and forwards a portion to the vendor. It does not teach that the vendor transfers customer payment information to the host as claimed.

This claimed step requires that the vendor transfer the right to collect monies for the transaction to the host where the transaction originated. This is an important characteristic of the present claimed invention since, as a transaction is taking place, the vendor recognizes the originating host and transfers financial information and the right to payment to the originating host. The transfer of the right to collect, from the vendor to the originating host, is a key step in this patentably distinct business model. Prior art, like Arnold, provides vendor-centric payment schemes and the ASTA reference only teaches that an agent (host) collects the funds and forwards a portion to the vendor. The cited prior art references fail to teach the claimed interaction between the host and vendor (i.e., transferring the right to collect from the vendor to the originating host) which is central to this business model. Because this step is not taught or suggested by any of the cited references, *prima facie* obviousness cannot be established.

Assuming *arguendo* that Arnold in view of the ASTA reference does teach or suggest every limitation of the claimed invention, Applicants argue that there is no motivation to combine the references.

"In determining the propriety of the Patent Office case for obviousness in the first instance, it is necessary to ascertain whether or not the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the reference before him to make the proposed substitution, combination, or other modification." *In re Linter*, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

As the motivation for combining the teachings of Arnold and the ASTA reference, the Office Action states "it would have been obvious to modify Arnold's method to include the teachings of ASTA. Such combination would ensure that referring affiliates are paid the proper commission for sales completed by a vendor partner." (Office Action 4/22/04, page 4, Para. 1).

The argument in the Office Action ignores the fact that none of the cited references suggest the desirability, or even feasibility, of providing an online business model where the vendor ascertains the originating host, transfers customer payment information to the originating host, permits the host to collect payments from the customer, and has the host take a commission

from the collected payments before forwarding the remainder to the vendor. As previously noted, Arnold teaches a business method where the merchant (vendor) collects the money and pays the sale originator (host) a commission. The ASTA reference only teaches that the host may collect payments from a customer and transfers part of the payment to a vendor. Thus, neither of these references teach or suggest the presently claimed invention where: 1) the vendor ascertains the originating host of a particular transaction and transfers customer payment information to the originating host, thereby enabling the host to collect the money, and 2) the originating host collects the payment, subtract its commission, and forwards the remainder to the vendor.

For at least the reasons discussed above, Applicants submit that the invention recited in claims 1-10 and 12-15 are patentably distinguishable over the cited prior art. Applicants respectfully request that the 35 U.S.C. § 103 rejections be withdrawn.

Conclusion

In view of the amendments and remarks made above, it is respectfully submitted that the pending claims are in condition for allowance, and such action is respectfully solicited.

Authorization is hereby given to charge our Deposit Account No. 19-2814 for any charges that may be due. Furthermore, if an extension is required, then Applicants hereby request such an extension.

Respectfully submitted,


Snell & Wilmer, L.L.P.

I hereby certify that this document and fee is being deposited on October 18, 2004 with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to MAIL STOP AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By: Rachel Carter



Signature


Julio Loza
Registration. No. 47,758
SNELL & WILMER L.L.P.
1920 Main St., Suite 1200
Irvine, CA 92614
Telephone: (949) 253-4924

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